IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JAIPUR BENCH, JAIPUR

ORDER

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S.B. Civil Misc. Appeal No. 3123/2006

Surya Prasad Gupta

Versus

Rajasthan Financial Corporation & Ors.

Date of order :: August 14, 2007

PRESENT
HON'BLE DR. JUSTICE VINEET KOTHARI

Mr. J.P. Goyal for the appellant
Mr. Virendra Lodha for the respondent No. 1-RFC

BY THE COURT:

1. This appeal is directed against the order dated 27.04.2006 passed by the learned Additional District Judge No. 2, Alwar rejecting the application under Order 9 Rule 13 CPC filed by the appellant, a guarantor for the loan advanced by the RFC to the

judgment debtor Shri Prem Narain Sharma, respondent No. 2.

2. The appellant has produced before this court the report of the Process Server dated 27.10.1999, wherein the Process Server has recorded that the appellant Surya Prasad has refused to take the summons of the court and therefore, the same were affixed on the door of the house of the appellant. However, no witnesses have countersigned the said report. Learned counsel, therefore, submits that there was no proper service of summons on the appellant and he has been wrongly proceeded ex parte by the learned trial court.

3. This court vide order dated 28.11.2006 had called upon the learned counsel for the respondent RFC to find out the exact amount to be paid by the guarantor to the RFC. Learned counsel for the RFC, during the course of the arguments, informed that a sum of Rs. 1,17,000/- being the decretal amount, is to be paid.

4. Having considered the rival submissions and in the facts and circumstances of the case, the impugned order is set aside and the proceedings are restored back to the trial court. The appellant will appear before the trial court on 10.09.2007 in the first instance and then the trial may proceed, which is further subject to the condition

that the appellant shall deposit 50% of the decretal amount of Rs. 1,17,000/- with the trial court, which may be disbursed to the plaintiff-respondent No. 1 Rajasthan Financial Corporation upon furnishing a solvent security to the effect that in case the suit against the present appellant fails, the plaintiff-respondent No. 1 RFC will refund the said amount to the present appellant with interest @ 9% p.a. The present appellant shall deposit the said 50% amount on or before the next date of hearing before the trial court, i.e. 10.09.2007.

5. With these observations, the present appeal is disposed of.

(Dr.VINEET KOTHARI),J.

Pramod
Item No. 51